IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 14 OF 2006

IN

SUIT NO. 2531 OF 2004

Mrs. Sushilarani Baburao Patel .. Petitioner
(Orig.Plaintiff)

Versus

Chandru J. Punjabee & Ors. .. Respondents
(Orig.Defendants)

Mr. H.J.Thakkar, Senior Counsel, along with Mr. N.M.Gunjalkar i/b. Mr.A.R.Bapat & Mt. M.M.Jadhav for the petitioner.

Mr. Chirag Balsara with Mr. Aftab Diamondwalla i/b. Divya Shah Associates for Respondents 1 to 11 & 13 to 15.

Mr. H.C.Pimpale for Respondent No.12/B.M.C.

CORAM: S.K.SHAH,J.

DATE : 17th March,2006.

P.C.

1. The petitioner alleges that the Respondents have committed contempt of the three orders passed by this

Court, one dated 11-8-2005, another dated 28-2-2005 and third dated 14.7.2005. The Respondents have preferred not to file reply as, according to the learned Counsel representing the Respondents, the petition is misconceived and the averments made in the petition clarify that there is no contempt.

2. In the order dated 11-8-2005, a statement was made by the Counsel representing the Respondents that the ad-interim order may be passed in terms of prayer clause (a) which accordingly was passed. Further, Counsel stated that insofar as the parties/flat purchasers who have already been put in possession, necessary undertakings have been obtained and copies thereof would be handed over to the advocate for the Plaintiff within a period of one week from that date. It is contended that the 13 flat purchasers were put in possession without furnishing to the petitioner the copies of the undertakings and without obtaining the undertakings. In this regard, a referee may be made to para 21 of the petition. In this para, it has been specified 13 flat purchasers as also the dates on which the possession of the flats were given to these flat purchasers. What is required to be noted is that the order is dated 11.8.2005, as per the dates of possession given in para 21, there were only four flat purchasers who have been given possession of the flats

and as per the statement made before the Court that copies of the undertakings would be furnished to the plaintiff within one week. In the averments made in para 21 itself, it has been mentioned that four undertakings and the indemnities given by the flat purchasers were furnished to the plaintiff on 18.8.2005. As only four flat purchasers were put in possession, four copies were furnished. That in fact is in compliance with the order. All other purchasers of the flats who have been given possession, the possession was given after the order came to be passed. Therefore, there is no contempt of this order.

3. By order dated 28-2-2005, the Court had granted ad-interim relief in terms of prayer clauses (b) and (e). Prayer clause (e) contemplated that unless and until the Plaintiff is put into possession of Flat No.101/201 as agreed under the agreement dated 8.3.2002, no other flat purchaser should be given possession. The relevant averments with regard to the Respondents having committed breach of this order are made in paras 24,25 and 28 of the petition. There is a Chart furnished by the Respondents in the City Civil Court which is produced at Exhibit "F" which shows that the flat Nos.602 and 603 were put in possession of the flat purchasers on 7.5.2005 and 6.5.2005

respectively. The physical possession of the plaintiff's flats Nos. 101 and 201 was given to the plaintiff on 11.5.2005 and therefore, it is alleged that there is a breach.

4. In this respect, however, it has been pointed out in para 24 of the petition itself that the petitioner had received a letter from the Respondents dated 6.5.2005 requiring her to take possession on 7th May, 2005. Accordingly, the petitioner had attended the flat on 7.5.2005 and requested the Respondents to give inspection of the occupation certificate as well as the undertakings and indemnities furnished by the flat purchasers. As per the averments made in para 28, the occupation certificate was issued on 6th May, 2005 itself. The petitioner however did not take possession of the flat on 7.5.2005 as there was no water connection or electric connection which she recorded by writing a letter addressed to the Respondents.

5. The learned Counsel for the Respondents however, submits that the only criteria for having possession was that occupation certificate should have been obtained and it was, in fact, issued on 6.5.2005 on which date the petitioner was served with a letter for taking possession on 7.5.2005. It is not indicated in

the petition as to on what date the flat Nos. 602 and 603 were put in possession of the flat purchasers although in the chart at Exhibit "F", the dates of letters issued by the Respondents to the flat purchasers for taking possession have been given. Therefore, strictly speaking, it cannot be said that the Respondents had put flat Nos. 602 and 603 in possession of the flat purchasers before putting the petitioner in actual possession of the flat on 11.5.2005. In fact, the Respondents had offered possession of the flat to the petitioner by letter dated 6.5.2005 itself when the occupation certificate was in their possession. Certain minor things which were required to be completed, as pointed out by the learned Counsel for the Respondents, could have been completed even after taking possession. That controversy is really a minor controversy and, strictly speaking, to my mind, there was no contempt of this order.

6. As regards the relief granted in terms of prayer clause (e), it concerns only to the appointment of Commissioner which, in fact, came to be appointed

7. Coming to the third order on which the Respondents have alleged to have committed contempt granting prayer clauses (c)(i) . Prayer clause (c)(i)

speaks of restraining the Respondents from encroaching upon the open space reserved for lawn garden, reserved for paved garden and reserved for parking space and pathway which are exclusively for the use of the petitioner under the agreement dated 8.3.2002. What is contended on behalf of the petitioner is that the Respondents got the plan sanctioned showing these spaces as "R.G." i.e. Recreation Ground. He further contends that as these spaces are shown as R.G. they will be open for use of the flat purchasers. In this respect, however, it is pointed out by the learned Counsel for the Respondents that in the undertakings and indemnities furnished by each of the flat purchasers, it is specifically mentioned that these three spaces are reserved exclusively for the use of the petitioner and each of the flat purchasers has undertaken not to encroach upon these spaces. This in fact served the purpose and that is in compliance with the order passed in terms of prayer clause (c)(i). What will be the effect of getting the plans sanctioned by showing these spaces as R.G. and whether this would be in violation of the terms of the agreement reserving these spaces exclusively for the use of the plaintiff would be a dispute and this dispute cannot be considered in the Contempt Petition. However, for the purpose of this Contempt Petition, the undertakings and indemnities taken from the flat

purchasers specifying that these three spaces were exclusively reserved for the use of the petitioner are sufficient.

8. In the circumstances, I do not find any merit in the Contempt Petition. The Contempt Petition stands disposed of.

9. At this stage, the learned Counsel for the petitioner requests for a direction to the Respondents to hand over the original undertakings and indemnities taken by the Respondents from the flat purchasers to the petitioner. The learned Counsel for the Respondents states that in this regard, the suit is already pending and he needs to take instructions. Instead of giving any direction in this regard, liberty is granted to the petitioner to make that prayer before the regular Court.

10. The learned Counsel for the Respondents undertakes to preserve the undertakings and indemnities taken by the Respondents from the flat purchasers till any order in that regard is passed by the regular Court.

(S.K.SHAH,J.)